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STATE OF WASHINGTON
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No. 98296-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GERRI S. COOGAN, the spouse of JERRY D. COOGAN,
deceased, and JAMES P. SPURGETIS, solely in his capacity
as the personal representative of the Estate of JERRY D.
COOGAN, deceased,

Petitioners,

v.

GENUINE PARTS COMPANY and NATIONAL
AUTOMOTIVE PARTS ASSOCIATION a.k.a. NAPA,

Respondents, and

BORG-WARNER MORSE TEC, INC. (sued individually and
as successor-in-interest to BORG-WARNER
CORPORATION), *et al.*,

Defendants.

***AMICUS CURIAE* BRIEF OF COALITION FOR LITIGATION
JUSTICE, INC. IN SUPPORT OF DEFENDANTS-RESPONDENTS**

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INTEREST OF AMICUS CURIAE

The Coalition for Litigation Justice, Inc.¹ is a nonprofit association formed by insurers in 2000 to address and improve the litigation environment for toxic tort claims. Over more than 20 years, the Coalition has filed nearly 200 *amicus curiae* briefs in cases that may significantly impact toxic tort litigation, including briefs in the following Washington cases: *Walston v. The Boeing Co.*, 181 Wn.2d 391, 334 P.3d 519 (2014); *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 282 P.3d 1069 (2012); *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 208 P.3d 1092 (2009); *Sales v. Weyerhaeuser Co.*, 163 Wn.2d 14, 177 P.3d 1122 (2008); *Braaten v. Saberhagen Holdings*, 165 Wn.2d 373, 198 P.3d 493 (2008); and *Maxwell v. Brand Insulations, Inc.*, No. 53252-2-II (filed Wash. App. 2020). The Coalition also filed an *amicus curiae* brief in the United States Court of Appeals for the Ninth Circuit involving a Washington federal court asbestos verdict. *See Estate of Barabin v. AstenJohnson*, 740 F.3d 457 (9th Cir.), *cert. denied*, 574 U.S. 815 (2014).

¹ The Coalition includes: Century Indemnity Company; Great American Insurance Company; Nationwide Indemnity Company; Allianz Reinsurance America, Inc.; Resolute Management, Inc., a third-party administrator for numerous insurers; and TIG Insurance Company.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This appeal presents important issues about the validity and impact of outlier damages awards in Washington, and the standards for determining whether such awards are excessive.² Specifically, using the standards as currently prescribed by Washington decisions, the Court of Appeals below held that part of the \$81.5 million verdict in this case—a \$30 million pain and suffering award—was so excessive as “unmistakably to indicate that the verdict must have been the result of passion or prejudice.” In reviewing that decision and the verdict as a whole, this Court has an opportunity to provide much-needed guidance to Washington judges, lawyers, and litigants, which can both encourage settlement and avoid the perception of arbitrariness.

The need for clarity is largely precipitated by the imprecise definition currently attached to the word “excessive.” This Court’s most recent articulation—stated 35 years ago—defines excessive damages as those that are so “flagrantly outrageous and extravagant” as to “shock[] the conscience.” *Bingaman v. Grays Harbor Cmty. Hosp.*, 103 Wn.2d 831, 835, 699 P.2d 1230 (1985). But, as the Court of Appeals noted below, “[t]he Supreme Court has provided no objective basis for evaluating whether a

² *Amicus* does not address the other issues that have been raised on review.

verdict is excessive.” Op. 26. While *Bingaman*’s subjective formulation is a proper and important consideration, the word “excessive” also should allow courts to take into account other *usual* verdicts in similar cases, and to consider this comparison as one factor in determining excessiveness. Other verdicts in comparable cases provide the best and only objective measure of excessiveness at a court’s disposal. These comparisons are particularly compelling in asbestos cases, where there exists a virtual mountain of data for ready comparison.

This comparison is not only compelled by plain meaning, but also by concerns for uniformity among the courts, and the importance of adding a quantifiable basis on which courts can begin their excessiveness assessment. Review of other verdicts can provide a court with critical data—an objective benchmark—for assessing reasonableness. Adding comparisons as an excessiveness factor would also see this Court join a myriad of other courts—including at least eight federal circuits—that have already accepted its use, and would bring this Court’s jurisprudence in line with almost 100 years of Washington precedent.

STATEMENT OF THE CASE

After a lengthy trial, a jury found Genuine Parts Company and National Automotive Parts Association (collectively, “Defendants”) liable for a mesothelioma-related death that Plaintiffs contend was caused by

asbestos exposure. The jury awarded Plaintiffs \$81.5 million: \$30 million in pain and suffering for the decedent; \$30 million to his decedent's spouse for loss of marital consortium and \$1.5 million for loss of the decedent's services, and \$10 million to each of the decedent's daughters.

Before the Court of Appeals, Division Two, Defendants argued that a number of errors were made with respect to the finding of liability and the amount of damages. The Court of Appeals affirmed the liability verdict, but reversed for a new trial on damages, in part because "the \$30 million verdict in favor of [the husband's] estate is so excessive that it shocks the court's conscience and [requires] a new trial." Op. 2. While the Court stated that "[t]he [Washington] Supreme Court has provided no objective basis for evaluating whether a verdict is excessive under CR 59(a)(5)," it also found "at first blush, that the pain and suffering verdict here is 'beyond all measure, unreasonable and outrageous.'" Op. 26. This appeal followed.

ARGUMENT

I. THIS COURT SHOULD PROVIDE GUIDANCE AS TO THE DEFINITION OF AN "EXCESSIVE" VERDICT

Washington courts have long struggled to pin down the meaning of "excessive" under CR 59. These difficulties only increased following this Court's decision in *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246, 840 P.2d 860 (1992), which some courts (including the Court of Appeals below) have interpreted as barring the consideration of comparable verdicts. Such

confusion stems from the perception that, as the Court of Appeals said below, “[t]he Supreme Court has provided no objective basis for evaluating whether a verdict is excessive.” Op. 26.

Instead of objective factors, lower courts have interpreted the relevant precedent to mean that the excessiveness inquiry is confined to considerations of only subjective factors about the individual case before them, such as the facts of the case and how a rational business actor would value the risk exposure.

However, exclusive reliance on subjective considerations necessarily leads to varied interpretations as each judge is forced to evaluate each verdict in a vacuum, without assistance from historical awards or attendant assistance from years of judicial experience. This extreme level of individual appraisal means that each verdict’s validity is subject only to the judgment of each individual judge. Untethered from historical awards and considerations, this system of extreme individuality—and the disparate decisions that it inevitably produces—increases the public’s perception of arbitrary decisions and subsequently undermines confidence in the courts.

This case gives the Court the opportunity to prevent arbitrariness, both real and perceived, by better defining the boundaries of the discretion given to lower courts. The Court also has an opportunity to ground—though

not limit—that discretion in objective and measurable criteria, leading to enhanced consistency.

Clarification not only will aid judges and judicial legitimacy throughout the state; it also will aid litigants, lawyers, and court dockets, by promoting mutually beneficial settlements. Over time, as seasoned lawyers observe awards in asbestos cases, they come to expect certain ranges of awards for certain types of cases, which information is passed on to litigants. On the other hand, uncertainty around award amounts broadens the spread between plaintiffs' expectations ("it's all subjective") and defendants' expectations ("sure it's subjective, but usually juries have awarded \$X"). Clarifying the test for excessiveness will narrow the gap between the two sides' positions, especially if such clarification provides objective measures that can inform those positions. Such clarity would increase the likelihood of a mutually-beneficial settlement, which benefits both sides by eliminating the uncertainty and expense of trial.

**II. THE CLARIFIED EXCESSIVENESS STANDARD SHOULD
SPECIFICALLY INCLUDE A COMPARISON OF OTHER VERDICTS**

In clarifying the excessiveness test, this Court has the opportunity to confirm that lower courts are correct to at least consider prior verdicts as a factor in their decisions. Most directly, this comparison is compelled by the plain meaning of the word "excessive," and is particularly relevant in asbestos cases. This plain meaning is further buttressed by the increases in

uniformity and rational decision-making that a comparison allows, comports with the approach taken by many other courts, and aligns with the approach historically taken by Washington courts. As courts have found, considering comparable verdicts serves to ground judges' considerations without precluding those judges from dispensing individualized justice.

A. The Plain Meaning of the Word "Excessive"
Requires a Comparison to be Made with "Usual" Awards

For more than a century, this Court has recognized that courts should vacate or remit verdicts that are sufficiently "excessive." *See, e.g., Bingaman*, 103 Wn.2d at 835 (verdict should be overturned if it is excessive to the point that it "shocks the conscience of the court"); *see also* CR 59(a), (a)(5) ("[A] verdict may be vacated and a new trial granted [where damages are] so excessive . . . as unmistakably to indicate that the verdict must have been the result of passion or prejudice."). Washington courts, however, have struggled with the meaning of the word "excessive" and have largely failed to acknowledge that to call something "excessive" raises the question "excessive as compared to what?"

Intuitively, the answer is "excessive as compared to what's normal." From a purely definitional perspective, dictionaries confirm: "excessive" is defined to mean "(a) Exceeding what is *usual* or proper; overmuch; or (b) Greater than the *usual amount* or degree; exceptional; very great." Webster's New International Dictionary, 2d ed. (1938) (emphasis added).

The clear common denominator between these two uses is a comparison to the *usual*. What's more, this definition confirms that considering what is excessive involves not only comparison with the *usual*, but also a consideration of what is *proper* or exceptional. This definition's application to verdict excessiveness is straightforward: To determine whether a verdict is "excessive," courts should consider whether it is "greater than the *usual* [verdict] amount," and whether it "exceed[s] what is . . . *proper*" given the specific facts involved in the case.³

B. Comparisons with Other Awards is Particularly Prudent
Given the Wealth of Data on Asbestos Cases Makes

In order to perform any comparison of value, there must exist enough information with which a court can compare; a court must be able to determine what a *usual* verdict would be. On this front, asbestos cases allow for particularly useful comparisons, as their prevalence makes them fertile grounds for such information. For example, by 2002, about 730,000

³ This interpretation has been expressly adopted by this Court in other contexts, holding that the "plain and ordinary meaning" of the word "excessive" is "beyond the *usual*, reasonable, or lawful limit." *State v. Oxborrow*, 106 Wn.2d 525, 531, 723 P.2d 1123 (1986) (emphasis added). See also *State v. Furman*, 122 Wn.2d 440, 461, 858 P.2d 1092 (1993) (the court must "evaluate whether the sentence of death is excessive or disproportionate as compared to other similar cases.").

claims had already been filed,⁴ and claims continue to be filed at a rate of about 4,000 per year.⁵ Indeed, in the 40 years before this case, Washington juries alone had issued verdicts in more than 30 mesothelioma cases, producing a band of verdicts between \$500,000 and \$6 million.⁶ Of course, verdicts have been rendered and reviewed in many other jurisdictions, particularly in those courts where the largest percentage of asbestos claims have been filed traditionally.

The value of this vast amount of asbestos data is further bolstered by this Court's decision in *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246, 840 P.2d 860 (1992). In that case, the Court explained that a comparison was inappropriate because there was no "mass of past awards" with similar facts that the Court could use to guide its decision. *See id.* at 268 ("[D]efendants' comparisons would be inadequate" without a "mass of past awards"). Rather than precluding consideration of usual or expected outcomes in mesothelioma cases, *Washburn* demonstrates the importance of grounding the Court's excessiveness analysis in reliable, extensive data.

⁴ See Stephen J. Carroll *et al.*, *Asbestos Litigation* 70-71 (RAND Corp. 2005).

⁵ See KCIC, *Asbestos Litigation: 2018 Year in Review*, at 3.

⁶ The jury in *Estate of Barabin v. AstenJohnson, Inc.*, 2010 WL 5137898 (W.D. Wash. Dec. 10, 2010), awarded a \$10.2 million verdict, which was vacated on appeal. *See* 740 F.3d 457 (9th Cir.), *cert. denied*, 574 U.S. 815 (2014).

Such an interpretation also comports with this Court’s numerous decisions, dating back to the late 1800s,⁷ in which it considered similar verdicts when evaluating excessiveness, and with the Ninth Circuit’s understanding of Washington law. *See Shaw v. United States*, 741 F.2d 1202, 1209 (9th Cir. 1984) (explaining that excessiveness under Washington law requires “comparing the sum to other awards in similar cases.”).

C. Other Jurisdictions Routinely Consult Awards in Analogous Cases When Analyzing Excessiveness

Across the country, many other courts have expressly acknowledged the role that comparable verdicts serve as guideposts for excessiveness. This includes not only various state courts, but also at least eight federal circuits.

⁷ *See Dyal v. Fire Cos. Adjustment Bureau*, 23 Wn.2d 515, 525, 161 P.2d 321 (1945) (“[C]ourts have for comparison repeatedly made, and may make, reference to verdicts in other cases”); *Clark v. Icicle Irrigation Dist.*, 72 Wn.2d 201, 208, 432 P.2d 541 (1967) (reducing verdict that was “more than double (almost treble) any prior award we have ever approved”); *Allison v. Bartelt*, 121 Wash. 418, 423–24, 209 P. 863 (1922) (finding verdict was appropriate after comparing awards in two prior cases); *Phillips v. Thomas*, 70 Wash. 533, 538–39 127 P. 97 (1912) (finding verdict was excessive after comparing awards from across the country); *Ohrstrom v. City of Tacoma*, 57 Wash. 121, 129, 96 P. 150 (1910) (finding verdict was excessive after comparing awards in two prior cases); *Ball v. Peterman Mfg. Co.*, 47 Wash. 653, 656, 92 P. 425 (1907) (finding verdict was excessive “as compared with verdicts which have been sustained in other cases where the injuries were incomparably greater”); *Walker v. McNeill*, 17 Wash. 582, 594–95, 50 P. 518 (1897) (finding verdict was appropriate after comparing awards in two prior cases); *Mitchell v. Tacoma Ry. & Motor Co.*, 13 Wash. 560, 571–72, 43 P. 528 (1896) (finding verdict was excessive, where “[i]n a great majority of [comparable cases] . . . the verdicts . . . have been for sums not more than one-fourth of the amount of the verdict in this case.”).

For instance, New York courts (where many asbestos cases have been filed over time) have thoroughly evaluated excessiveness comparisons. Recognizing that “[w]here the exercise of discretion is at issue, certain standards of uniformity should be adhered to,” New York’s high court has said that “prior verdicts may guide and enlighten the court and in a sense, may constrain it.” *Senko v. Fonda*, 53 A.D.2d 638, 639 (N.Y. Ct. App. 1976). As that court went on to explain:

A long course of practice, numerous verdicts rendered year after year, orders made by trial justices approving or disapproving them, decisions on the subject by appellate courts, furnish to the judicial mind some indication of the consensus of opinion of jurors and courts as to *the proper relation* between the character of the injury and the amount of compensation awarded.

Id. (quotations omitted) (emphasis added); *see also Furey v. United States*, 458 F. Supp. 2d 48, 56–57 (N.D.N.Y. 2006) (“When determining pain and suffering awards, courts often look to awards in similar cases.”).

North Dakota’s Supreme Court made this point in a similarly clear and poignant manner:

As a practical matter, we are certain that such comparison tacitly takes place, for how else could a verdict ‘shock the judicial conscience’ except in relation to the court’s own experience with verdicts in other similar cases?

Cook v. Stenslie, 251 N.W.2d 393, 398 (N.D. 1977). Various other states’ high courts also permit courts to consider comparable verdicts, including

New Mexico,⁸ Michigan,⁹ California,¹⁰ Delaware,¹¹ Massachusetts,¹² Connecticut,¹³ Kentucky,¹⁴ Tennessee,¹⁵ South Carolina,¹⁶ and others.

⁸ See *Vivian v. Atchison, Topeka & Santa Fe Ry. Co.*, 363 P.2d 620, 622 (N.M. 1961) (“[A] consideration of other verdicts and a comparison of the facts and circumstances is helpful,” because “the value of all things [is] arrived at on a relative basis.”).

⁹ See *Gilbert v. DaimlerChrysler Corp.*, 685 N.W.2d 391, 399–400 (Mich. 2004), *cert. denied*, 546 U.S. 821 (2005) (“[A]ppellate review of jury verdicts must be based on objective factors,” including whether the verdict “is comparable to awards in similar cases within the state and in other jurisdictions”).

¹⁰ See *Seffert v. Los Angeles Transit Lines*, 364 P.2d 337, 346 (Cal. 1961) (allowing that, on appellate review, “awards for similar injuries may be considered as one factor . . . in determining whether the damages awarded are excessive.”). It is still an open question whether trial courts may also consider comparable awards or whether this is exclusively to be considered by California appellate courts. Compare *Bigboy v. San Diego*, 154 Cal. App. 3d 397, 201 Cal. Rptr. 226, 231 (1984) (“[T]he trial judge’s personal opinion based on the ranges of awards in other cases” was “an irrelevant consideration”), with *Asam v. Ortiz*, 2014 WL 585350, at *8 (Cal. Super. Ct. Feb. 3, 2014) (“[T]he [trial] court is permitted to consider other awards in similar cases”).

¹¹ See *Barba v. Boston Scientific Corp.*, 2015 WL 6336151, at *14 (Del. Super. Ct. Oct. 9, 2015) (“When determining whether a jury’s verdict shocks the conscience, it is instructive to look at jury verdicts in similar . . . cases”).

¹² See *Evans v. Lorillard Tobacco Co.*, 2011 WL 7090720, at *3 (Mass. Super. Ct. Sept. 2, 2011) (“Massachusetts’ courts have . . . found comparison [to other verdicts] a useful tool, if not the basis, for determining excessiveness”), *aff’d in relevant part*, 990 N.E.2d 997, 1038 (Mass. 2013).

¹³ See *Gorczyca v. New York, New Haven & Hartford R.R. Co.*, 109 A.2d 589, 592 (Conn. 1954) (“Comparison of this award with others made in this jurisdiction . . . offer[s] some guidance in determining the range of those necessarily flexible limits of fair and reasonable compensation by which the amount of the verdict must be tested.”).

The trend is even more pronounced in the federal system, where at least eight circuit courts have considered analogous verdicts as a factor in analyzing excessiveness. *See, e.g., Thompson v. Mem'l Hosp.*, 625 F.3d 394, 408 (7th Cir. 2010). Judge Posner explained that the “throw-up-the-hands approach” to excessiveness—in which some appellate courts review awards “pursuant to no standard”—results in “arbitrary variance in awards.” *Jutzi-Johnson v. United States*, 263 F.3d 753, 759 (7th Cir. 2001). To minimize that risk, the Seventh Circuit “make[s] . . . comparisons [to other awards] routinely in reviewing pain and suffering awards.” *Id.* The First,¹⁷

¹⁴ *See Aetna Oil Co. v. Metcalf*, 190 S.W.2d 562, 563 (Ky. 1945) (“While the amount of the verdict must of necessity be controlled by the facts of the individual case, yet there is no better method of solving the problem of whether the verdict is excessive than by comparing the injuries suffered with the amount of the verdicts returned in similar cases.”).

¹⁵ *See Meals ex rel. Meals v. Ford Motor Co.*, 417 S.W.3d 414, 426 (Tenn. 2013) (“In addition [to the case’s facts], we can look to verdicts in similar cases” when determining if damages are excessive).

¹⁶ *See Lucht v. Youngblood*, 221 S.E.2d 854, 858 (S.C. 1976) (“The comparison approach is helpful and sometimes forceful”).

¹⁷ *See Muniz-Olivari v. Stiefel Labs., Inc.*, 496 F.3d 29, 40 (1st Cir. 2007) (“Often we look to comparable cases to determine if a damages award is totally out of line.”).

Second,¹⁸ Fifth,¹⁹ Sixth,²⁰ Eighth,²¹ Ninth,²² and Eleventh²³ Circuits also approve or allow the practice, as have other common law courts, including English courts. *See, e.g., Jutzi-Johnson*, 263 F.3d at 759 (citing J. Munkman, *Damages for Personal Injury and Death* 162–63 (7th ed. 1985)).

Finally, while some state courts have gone against the grain on the issue—primarily repeating the position that “each case should be considered on its own merits”—this approach does not warrant excluding

¹⁸ *See Nairn v. Nat’l R.R. Passenger Corp.*, 837 F.2d 565, 568 (2d Cir. 1988) (“In order to determine whether a particular award is excessive, courts have found it useful to review awards in other cases involving similar injuries, while bearing in mind that any given judgment depends on a unique set of facts and circumstances.”).

¹⁹ *See Williams v. Chevron U.S.A., Inc.*, 875 F.2d 501, 506 (5th Cir. 1989) (“[W]e examine past awards for rough guidance in assessing the award at hand.”).

²⁰ *See Mys v. Mich. Dep’t of State Police*, 886 F.3d 591, 603 (6th Cir. 2018) (“[T]he pain-and-suffering component of the jury’s award is not excessive when compared with other awards approved by this court.”).

²¹ *See McCabe v. Parker*, 608 F.3d 1068, 1080 (8th Cir. 2010) (“We therefore find no abuse of discretion in the district court’s . . . decision to use a damage comparison approach.”).

²² *See SEC v. Gemstar-TV Guide Int’l, Inc.*, 401 F.3d 1031 (9th Cir.), *cert. denied sub nom. Yuen v. SEC*, 126 S. Ct. 416 (2005) (explaining the process for interpreting what is excessive: “The trier-of-fact determines first what constitutes ‘adequate compensation’ Such determinations require evidence which consists of similar factual situations which can be compared to the case at hand. If the case at hand falls outside the bounds permitted in the comparison cases, that result is deemed ‘excessive’”).

²³ *See Johnson v. United States*, 780 F.2d 902, 908 (11th Cir. 1986) (“[E]xcessiveness may be tested by comparing the verdict to those damage awards determined not to be excessive in similar cases.”).

relevant data. In urging this Court to consider comparable cases, *amicus* does not dispute these diverging courts' premise: each case is different, and that excessiveness should consider those individual factors. However, none of those courts has persuasively explained why a court cannot consider both an individual case's facts and comparable verdicts. *Amicus* simply disagrees that considering each case's peculiarities requires courts to ignore other cases' outcomes, or to forge a new conception of "excessiveness" out of whole cloth. A categorical rule against a court considering other cases to evaluate the excessiveness of a jury's damage award simply prohibits that court from considering the only objective data available.

D. Considering Comparable Verdicts
 Does Not Undermine Individualized Justice

Should this Court allow for an examination of comparable verdicts, it need not treat those comparable verdicts as a ceiling but simply a factor to be considered. *See, e.g., Jutzi-Johnson*, 263 F.3d at 760 (Posner, J.) ("[A] practice of consulting damages awards in comparable cases for purposes of facilitating a more thoughtful, disciplined, and informed award [is not] the same thing as a rule limiting awards within a range set by previous cases."). This flexible approach stands in stark contrast to *Washburn*, where the defendant argued that "a verdict *can never exceed* what has historically been awarded for what defendant conceives to be comparable injuries." *Washburn*, 120 Wn.2d at 871 (emphasis added).

Instead, courts that have adopted a more flexible standard allow that comparable verdicts provide a benchmark from which a court can ground its analysis, deviating from that benchmark as the facts permit. *See, e.g., Nairn v. Nat'l R.R. Passenger Corp.*, 837 F.2d 565, 568 (2d Cir. 1988) (“In order to determine whether a particular award is excessive, courts have found it useful to review awards in other cases involving similar injuries, while bearing in mind that any given judgment depends on a unique set of facts and circumstances.”).

Courts need not assume that a verdict exceeding the historical norm is presumptively excessive. Rather, a proper consideration of past verdicts would provide range of historically-accepted verdicts, which the court can adjust in either direction based on the facts of any specific case, at which point it would be prepared to determine whether that amount is excessive such as “unmistakably to indicate that the verdict must have been the result of passion or prejudice.”

CONCLUSION

For nearly 100 years, this Court had held that “excessiveness” is properly considered through evaluation of individual facts, *in conjunction* with an understanding of historical awards in similar cases. The Court should take this opportunity to clarify that the plain meaning of the word “excessive” requires at least a consideration of other verdicts, and that such

consideration comports with sound judicial policy by encouraging settlements and reducing arbitrariness in rulings.

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Dated: September 25, 2020

CERTIFICATE OF SERVICE

On this 25th day of September, 2020, the undersigned certifies under penalty of perjury under the laws of the State of Washington: I am an employee of Shook, Hardy & Bacon L.L.P., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. Today, I served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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